

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On its Own Motion)	Docket No. 04-0165
)	
Amendment of 83 Ill. Adm. Code 759)	

**INITIAL COMMENTS OF THE STAFF OF THE
ILLINOIS COMMERCE COMMISSION**

The Staff of the Illinois Commerce Commission (hereafter “the Staff”) states, for its Initial Comments in the above-captioned proceeding, as follows:

I. Background

On June 28, 2001, then-Governor George Ryan signed into law Public Act 92-22, which, among other things, added Section 13-301.3 to the Illinois Public Utilities Act (the “PUA”). P.A. 92-22. Section 13-301.3 created the “Digital Divide Elimination Infrastructure Program” whereby the Commission was directed to adopt rules establishing the criteria and manner pursuant to which it was to award grants from the Digital Divide Elimination Infrastructure Fund (the “Digital Divide Fund”) to eligible entities to construct high-speed data transmission facilities in areas of the State of Illinois subject to a waiver under Section 13-517 of the PUA. 220 ILCS 5/13-301.3(a); 220 ILCS 5/13-301.3(b).

Section 13-517 of the PUA provides that every incumbent local exchange carrier shall offer or provide advanced telecommunications services to not less than 80% of its customers by January 1, 2005. 220 ILCS 5/13-517. For telecommunications carriers that cannot meet this new requirement, Section 13-

517(b) authorizes the Commission to grant a full or partial waiver of the new requirements. 220 ILCS 5/13-517(b). The term “advanced telecommunications services” means “services capable of supporting, in at least one direction, a speed in excess of 200 kilobits (kbps) to the network demarcation point at the subscriber’s premises. 220 ILCS 5/13-518(c).

On September 12, 2001, the Commission, on its own motion, initiated Docket No. 01-0590 as a rulemaking proceeding to comply with the General Assembly’s mandate.¹ Thereafter, on March 18, 2003, the Commission completed that rulemaking proceeding and adopted final rules implementing Section 13-301.3, which became effective on April 1, 2003.² Those rules are found in Code Part 759. See 83 Ill. Admin. Code §759.110 *et seq.*

On July 23, 2003, Governor Blagojevich signed into law Public Act 93-0306, which, in part, amends Section 13-301.3 of the PUA. P.A. 93-0306. Section 13-301.3 now provides in pertinent part:

(b) The Commission shall adopt rules under which it will make grants out of funds appropriated from the Digital Divide Elimination Fund to eligible entities as specified in the rules for the construction of high-speed data transmission facilities in eligible areas of the State. For purposes of determining whether an area is an eligible area, the Commission shall consider, among other things, whether (i) in such area, advanced telecommunications services, as defined in subsection (c) of Section 13-517 of this Act, are under-provided to residential or small business end users, either directly or indirectly through an Internet Service Provider, (ii) such area has a low population density, and (iii) such area has not yet developed a competitive market for advanced services. In addition, if an entity seeking a grant of fund from the Digital Divide Elimination Infrastructure Fund is an incumbent local exchange carrier having the duty

¹ *Illinois Commerce Commission On Its Own Motion: Implementation of Section 13-301.3 of the Public Utilities Act*, Docket No. 01-0590, September 12, 2001.

² *Illinois Commerce Commission On Its Own Motion: Implementation of Section 13-301.3 of the Public Utilities Act*, Order, Docket No. 01-0590, March 18, 2003; 83 Ill. Admin. Code 759, adopted at 27 Ill. Reg. 5735, effective April 1, 2003.

to serve such area, and the obligation to provide advanced services to such area pursuant to Section 13-517 of this Act, the entity shall demonstrate that it has sought and obtained an exemption from such obligation pursuant to subsection (b) of Section 13-517. Any entity seeking a grant of funds from the Digital Divide Elimination Infrastructure Fund shall demonstrate to the Commission that the grant shall be used for the construction of high-speed data transmission facilities in an eligible area and demonstrate that it satisfies all other requirements of the Commission's rules. The Commission shall determine the information that it deems necessary to award grants to this Section.

220 ILCS 5/13-301.3, as amended by P.A. 93-0306.

In short, the legislation amends Section 13-301.3 in three ways. First, the new law expands the scope of areas potentially eligible to receive grants from the Commission. 220 ILCS 5/13-301.3(b), as amended by P.A. 93-0306. Prior to Public Act 93-0306, only those areas served by incumbent local exchange carriers that received a waiver from the Commission under Section 13-517 were eligible to receive grants. 220 ILCS 5/13-301(b), as found in P.A. 92-0022.

Second, incumbent local exchange carriers are now only eligible to receive grants from the Commission if they have already obtained a waiver from the Commission under Section 13-517 of the PUA. Previously, Section 13-301.3 imposed no such precondition on incumbent local exchange carriers before becoming eligible to receive a grant. Compare 220 ILCS 5/13-301.3, as found in P.A. 92-0022 with 220 ILCS 5/13-301.3, as amended by P.A. 93-0306. Third, the public act sets forth specific criteria the Commission must consider when evaluating whether a particular area of the State is eligible to receive a grant. 220 ILCS 5/13-301.3, as amended by P.A. 93-0306.

On February 17, 2004, the Staff of the Telecommunications Division submitted its Staff Report to the Commission that outlined the changes made by Public Act 93-0306 and suggested conforming amendments to the Commission's rules in Code Part 759. On February 24, 2004, the Commission, on its own motion, entered an order initiating this rulemaking proceeding to amend Code Part 759 based upon the contents of the Staff Report.³ In that order, the Commission also made the Staff Report part of the record in this proceeding. Id.

II. Proposed Amendments to the Rule

A. Overview.

Currently, Code Part 759 consists of nine Sections. *See generally*, 83 Ill. Admin. Code §759.110. In light of the enactment of Public Act 93-0306, however, three Sections of Code Part 759 must be amended to ensure consistency between the Commission's rules and the statute as amended. These changes are proposed to ensure that grants are awarded for use in for eligible areas within the State, and that these grants are used for the provision of advanced services as that term is defined under Section 13-517(c) of the PUA. The relevant proposed changes to each Section of Code Part 759 are set forth below.

B. Section 759.120 Definitions

³ *Illinois Commerce Commission On Its Own Motion: Implementation of Section 13-301.3 of the Public Utilities Act*, Order, Docket No. 04-0165, February 24, 2004 (the "Initiating Order").

Staff recommends that the term and definition for “Waiver Area” be deleted, because that term is no longer used in the statute to designate the areas where eligible entities may spend grant moneys awarded by the Commission.

C. Section 759.230

The changes set forth below are proposed to implement the new statutory eligibility criteria set forth in Public Act 93-0306.

In Section 759.230, Staff recommends that the term “Eligible Areas” should be amended to reflect that grants may be spent only in areas of the State the Commission determines to be “eligible areas” within the meaning of the statutory criteria.

Staff recommends that a new subsection (a) be added to Section 759.230, to provide that the Commission must consider, in deciding whether to classify an area as an “Eligible Area” within the meaning of Section 13-301.3, whether the area under scrutiny is one of those parts of the State where advanced telecommunications services are under-provided to residential and small business end users. This is one of the eligibility criteria set forth in the statute as amended.

Staff recommends that a new subsection (b) be added to Section 759.230 to provide that the Commission must consider, when deciding whether to classify an area as an “Eligible Area” within the meaning of Section 13-301.3, whether the area under scrutiny is one of those parts of the State with low population density.

Staff recommends that a new subsection (c) be added to Section 759.230 to provide that the Commission must consider, when deciding whether to classify an area as an “Eligible Area” within the meaning of Section 13-301.3, whether the area under scrutiny is one of those parts of the State where a competitive market has not yet developed for advanced telecommunications services.

A subsection (d) should be added to Section 759.230 to provide that the service territory of an incumbent local exchange carrier can only potentially qualify as an “Eligible Area”, if the carrier has received an exemption under Section 13-517 of the PUA.

D. Section 759.310: Proposal Content

Staff recommends that subsection (b)(6) of Section 759.310 be amended to add the phrase “and a description of the area as it relates to the Eligible Area criteria (see Section 759.230)”. The suggested change will clarify that subsection and provide an appropriate cross-reference to the revised definition of “Eligible Areas.”

E. Section 759.320: Selection of Grant Recipients

Staff recommends that a subsection (c) be added to Section 759.320 to require that the Commission consider the location of a particular proposed project when evaluating a grant application, this information being (a) necessary to the determination of whether the area is an “eligible area” within the meaning

of the new statutory criteria noted above, and (b) necessary to award grants pursuant to Section 13-301.3.

Wherefore, the Staff respectfully requests that the Commission adopt the Proposed Rule in its entirety.

Respectfully submitted,

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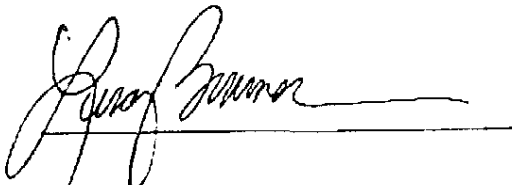
VERIFICATION

STATE OF ILLINOIS)
) 04-0165
COUNTY OF SANGAMON)

I, Peter J. Wagner do on oath depose and state that if called as a witness herein, I would testify to the facts contained in the foregoing document based upon personal knowledge.



SIGNED AND SWORN TO BEFORE ME THIS 7th DAY OF APRIL, 2004.


NOTARY PUBLIC